

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Employers Insurance Company of Wausau,

Plaintiff,

v.

17 Civ. 3970 (DAB)
ADOPTION OF REPORT
& RECOMMENDATION

Kingstone Insurance Company,

Defendant.

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DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the Report and Recommendation of United States Magistrate Judge Stewart D. Aaron ("Report"). Judge Aaron's Report recommends that Plaintiff's motion for partial summary judgment be GRANTED and that Defendant's motion for summary judgment be DENIED.

For the reasons set forth below, Judge Aaron's Report and Recommendation dated December 4, 2019 shall be adopted in full as to its factual recitations, findings, and recommendations. Accordingly, Plaintiff's motion for partial summary judgment is GRANTED and Defendant's motion for summary judgment is DENIED.

I. Background

The facts in this case are set forth in detail in Judge Aaron's Report and will not be restated here. (See R. & R. at 1-10, ECF No 58.) Judge Aaron's Report and Recommendation was issued and served on both Parties. To date, neither Party has filed any objection.

II. Discussion

Pursuant to 28 U.S.C. § 636(b)(1)(C), "[w]ithin fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations" 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(2). The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record. See 28 U.S.C. § 636(b)(1)(A); Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). Accordingly, this Court reviews the Report and Recommendation for clear error because neither Party has filed a timely objection.

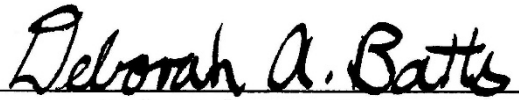
The Court has reviewed the Report and Recommendation and finds no clear error on the face of the record.

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation of United States Magistrate Judge Stewart Aaron dated December 4, 2019 is hereby APPROVED, ADOPTED, and RATIFIED by the Court in its entirety;
2. Pursuant to Magistrate Judge Aaron's recommendation, Plaintiff's motion for partial summary judgment is hereby GRANTED. Defendant's motion for summary judgment is hereby DENIED;
3. Defendant Kingstone Insurance Company has a duty to defend Port Authority of New York and New Jersey, Capital Cleaning Contractors, Inc. of New York, and Bombardier Transportation (Holdings) USA Inc. in the underlying action, James Nunziato v. The Port Authority of New York and New Jersey, Bombardier Transportation (Holdings) USA Inc. and Capital Cleaning Contractors, Inc. of New York, Index No. 23303/2015E, which is pending in the Supreme Court of the State of New York, County of Bronx. Furthermore, Defendant's insurance coverage applies on a primary basis before coverage under Plaintiff's policy.

SO ORDERED.

DATED: New York, NY
December 19, 2019


Deborah A. Batts
United States District Judge